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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC J. HANSEN and JESSE J. WILLIAMS

Appeal 2009-014509
Application 09/589,973
Technology Center 1700

Decided: June 17, 2010

Before MICHAEL P. COLAIANNI, BRADLEY R. GARRIS, and
BEVERLY A. FRANKLIN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 2-10, 12-16, and 18-28. We have jurisdiction under 35 U.S.C. § 6.

We REVERSE.

Appellants claim a method for cleaning upholstery or carpet in which fluid cleaning solution is dispensed onto the upholstery or carpet surface and

then recovered from the surface with suction comprising the step of admixing an oxidizing agent with the cleaning solution prior to the step of dispensing the cleaning solution onto the upholstery or carpet (claims 18, 21). In one embodiment, the method further comprises mixing the admixture of oxidizing agent and cleaning solution with heated air “to heat the admixture” and heating the air before the step of mixing the admixture with heated air (claim 18). In another embodiment, the method further comprises “heating the cleaning solution before the admixing step to heat the admixture” (claim 21).

Representative claims 18 and 21, the sole independent claims on appeal, read as follows:

18. A method for cleaning an upholstery or carpet surface in which a fluid carpet or upholstery cleaning solution is dispensed onto the upholstery or carpet surface to be cleaned and the cleaning solution is recovered from the surface with suction, comprising the steps of:

admixing an oxidizing agent with the cleaning solution prior to the step of dispensing the cleaning solution onto the upholstery or carpet surface;

mixing the admixture with heated air to heat the admixture; and

heating the air before the step of mixing with¹ admixture with heated air.

21. A method for cleaning an upholstery or carpet surface in which a fluid carpet or upholstery cleaning solution is dispensed onto the upholstery or carpet surface to be cleaned and the cleaning solution is recovered from the surface with suction, comprising the steps of:

¹ Claim 18 contains a minor informality which is deserving of correction. In the last step of this claim, the phrase “mixing with admixture with heated air” should read – mixing the admixture with heated air --.

admixing an oxidizing agent with the cleaning solution prior to the step of dispensing the cleaning solution onto the upholstery or carpet surface; and

heating the cleaning solution before the admixing step to heat the admixture.

The references set forth below are listed in the Answer (Ans. 2-3) as the evidence relied upon in the prior art rejections before us:

McAllise	5,500,977	Mar. 26, 1996
Miracle	5,576,282	Nov. 19, 1996
Wang	5,987,696	Nov. 23, 1999

We will address each of the rejections on appeal in the sections below.

The § 103 Rejection of claim 18 over McAllise in view of Miracle

The Examiner rejects claim 18 under 35 U.S.C. § 103(a) as being unpatentable over McAllise in view of Miracle (Ans. 3).

The Examiner finds that McAllise discloses all aspects of the claim 18 method except for the use of an oxidizing agent but concludes that it would have been obvious to admix an oxidizing agent with the cleaning solution of McAllise in view of Miracle (*id.* at 3-4). With regard to the specific claim 18 step of “mixing the admixture with heated air to heat the admixture”, the Examiner makes the finding set forth below:

McAllise et al teach that it is well known that when an extracting cleansing device (10) is operating in cleansing mode, warm moist exhaust air (610) is discharged through the discharge nozzle (644) whereby the cleaning fluid is atomizingly distributed throughout the discharged air and conveyed thereby to the surface being cleaned and cleaning solution is recovered from the surface with the suction (70) and placed in a recovery tank (50). Please refer to figure 8B and col. 12, lines 11-26.

(*id.* at 3). Further regarding this claim limitation, the Examiner also finds that “McAllise et al teach that the motor 610 generates the warm air wherein said warm air and the cleaning solution is [sic, are] discharged through the nozzle 65 and conveyed on the surface to be cleaned” (*id.* at 9).

Appellants dispute the Examiner’s finding that the above-quoted claim limitation is satisfied by McAllise’s column 12 disclosure of mixing warm moist exhaust air with cleaning solution. In a detailed analysis of the reference disclosure, Appellants have shown the Examiner’s above findings to be erroneous. Appellants correctly explain that cooling air is passed over McAllise’s fan motor and discharged through outlet conduits 636L and 636R (col. 3, ll. 33-39; Fig. 6) rather than mixed with cleaning solution in discharge nozzle 65 as the Examiner improperly found (App. Br. 6-7; Reply Br. C). Moreover, Appellants are correct in explaining that the warm moist exhaust air referred to in column 12 of McAllise is obtained from the air/water separator and recovery tank 50 wherein warmth and heat are added to the air via the hot cleaning solution initially provided to McAllise’s hot water carpet cleaning extractor (*id.*). Under these circumstances, we agree with Appellants’ argument (*id.*) that this warm moist exhaust air cannot be hotter than the initially-provided hot cleaning solution and accordingly

cannot perform the claim 18 step “mixing the admixture [i.e., oxidizing agent and cleaning solution] with heated air to heat the admixture” (emphasis added).

For the above-stated reasons, Appellants have revealed error in the Examiner’s finding that McAllise’s warm exhaust air would perform the claim 18 function “to heat the admixture” of McAllise’s cleaning solution and Miracle’s oxidizing agent. We cannot sustain, therefore, the Examiner’s § 103 rejection of claim 18 over McAllise and Miracle.

The § 103 rejection of all appealed claims over Wang and Miracle

As an initial matter, we summarily reverse this rejection as applied against claim 18 and the claims which depend therefrom. As correctly argued by Appellants, “[t]he Examiner has not articulated any reasons as to why claim 18 is met by Wang and Miracle” (App. Br. 9), and “the combination of Wang and Miracle does not disclose the steps of mixing an admixture (of oxidizing agent and cleaning [solution]) with heated air to heat the admixture and heating the air before the step of mixing the admixture with heated air as set forth in claim 18” (*id.*). This argument is convincing and supported by the fact that the Examiner’s statement of rejection does not address claim 18 (Ans. 4-6) and the fact that the Examiner does not respond to Appellants’ argument (*id.* at 8-11).

Regarding claim 21, the Examiner finds that Wang discloses a carpet cleaning machine comprising a cleaning fluid reservoir and a heater for heating the cleaning fluid (Ans. 4-5). The Examiner acknowledges that Wang does not disclose the oxidizing agent required by claim 21 or the claim 21 step of heating the cleaning solution prior to admixing with the oxidizing agent (*id.*). The Examiner concludes that it would have been

obvious to provide the cleaning solution of Wang with the oxidizing agent of Miracle and “to add the oxidizing agent after the heating of the cleaning solution because the skilled artisan would have wanted the machine[’]s cleaning solution to become heated to a desirable temperature before adding the oxidizing agent so that the effectiveness of the oxidizing agent would not be limited” (*id.* at para. bridging 5-6).

Appellants argue that Wang and Miracle contain no teaching or suggestion of the claim 21 step “heating the cleaning solution before the admixing step to heat the admixture” (App. Br. para. bridging 10-11). We agree.

The Examiner’s ultimate conclusion of obviousness is not supported by the record even assuming that Wang and Miracle would have suggested using a heated admixture of oxidizing agent and cleaning solution “so that the effectiveness of the oxidizing agent would not be limited” as urged by the Examiner (Ans. para. bridging 5-6, last sentence). There are ways of achieving such a heated admixture other than the claim 21 step of “heating the cleaning solution before the admixing step to heat the admixture”. For example, the oxidizing agent and cleaning solution could first be admixed and then heated in order to obtain the heated admixture and concomitantly oxidizing agent effectiveness. As another example, the oxidizing agent rather than the cleaning solution could be heated before the admixing step in order to obtain the heated admixture and concomitantly oxidizing agent effectiveness.

Neither Wang nor Miracle contains any teaching or suggestion of the specific sequence required by claim 21 wherein the cleaning solution is heated before the admixing step in order to heat the admixture. In the record

before us, only Appellants disclose this sequence (Spec. 4, ll. 10-18) and a reason (i.e., the limited life span of oxidizing agent and activator) for such a sequence (*id.* at 38, l. 13-39, l. 12). These circumstances lead us to conclude that the Examiner's rejection of claim 21 is the result of an unwitting application of hindsight derived from Appellants' own disclosure.

Accordingly, we also cannot sustain the Examiner's § 103 rejection of claim 21 and of the claims which depend therefrom.

The § 103 rejection of all appealed claims over "McAllise et al (5,987,696) in view of Miracle (5,576,282)" (Ans. 6)

In stating this rejection, the Examiner clearly has misidentified the primary reference since the name "McAllise et al" does not correspond to the number "5,987,696" which is the patent number for the above-discussed Wang reference. Therefore, because the primary reference "McAllise et al (5,987,696)" applied by the Examiner in this rejection does not exist in the record of this appeal, we summarily reverse the rejection.

Conclusion

We have reversed each of the rejections advanced by the Examiner in this appeal.

The decision of the Examiner is reversed.

REVERSED

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